IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21411 of 2005
To
SPECIAL CIVIL APPLICATION No. 21415 of 2005
WITH
SPECIAL CIVIL APPLICATION NO.23807 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJLAXMI PRINTS PVT LTD & 1 - Petitioner(s)
Versus
SURAT MUNICIPAL Corporation & 1 - Respondent(s)

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Appearance :
MR AMAR N BHATT for Petitioner(s) : 1 - 2.
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 2.
MR PRASHANT G DESAI for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/03/2006

COMMON ORAL JUDGMENT

1.As common question of law and facts arises in all these group of petitions, they are being disposed of by this common judgment and order.

2. Rule. Shri Prashant Desai, learned advocate waives service of rule on behalf of the respondents.

3. With consent of parties, the matters are taken up for final hearing today.

4. By way of these petitions under Article 226 of the Constitution of India, the respective petitioners have prayed for an appropriate writ, direction and/or order directing the respondents – Surat Municipal Corporation to change the size of the existing water connection from 6″ diameter to 4″ diameter pipeline. The petitioners have also prayed to quash and set aside the communication dated 15-10-2005 by respondent No.2 Hydraulic Engineer, Surat Municipal Corporation rejecting the application submitted by the petitioners for reducing the pipeline from 6″ diameter to 4″ diameter. The petitioners have also prayed to quash and set aside the bills at Annexure M to the petition calling upon the petitioners to make the payment of water charges on the basis of 6″ diameter pipeline. The petitioners have also prayed that after making the above changes in the existing pipeline, to direct the respondents to enter into the agreement regarding water supply to the petitioners.

5. It is the case of the petitioners that they are having factories at GIDC, Pandesara, Surat and for their

processing activities, they required additional water supply. That they are the member of the Pandesara Green Environment and Water Welfare Cooperative Society Limited (hereinafter referred to as “the society”). This is a society of all similar units to that of respective petitioners. Prior to 1998, the supply of water for the petitioners' units were made available by the GIDC as well as through private bore-wells. It is the case of the petitioners that in the year 1998-99, respondent No.1 Surat Municipal Corporation required the respective petitioners and the members of the aforesaid society i.e. other similar units to give approximate details regarding the consumption of water in their respective units. It is the case of the petitioners that thereafter in or about 1999, the petitioners installed new equipments and machineries and modified the process of manufacture by installing recycling plant, as a result of which the requirement of water went down substantially and therefore, they requested the Corporation in the year 1999 that since their water consumption had been reduced, the requirement of the water should be considered as 5 lacs liter per day. It is the case of the petitioners that even the society also recommended reducing the sanctioned connection and it is the case of the

petitioners that without considering the request, petitioners were sanctioned 6″ diameter connection on the basis of consumption of water of 8 lacs liter per day. It is the case of the petitioners that had the request of the petitioners for reducing water connection to 5 lacs liter per day been considered by respondent No.1 – Corporation, the petitioners would have been granted 4″ diameter connection. It is the case of the petitioners that even thereafter, the petitioners continued to make representation for reducing the sanctioned connection from 6″ diameter to 4″ diameter, commensurate with the reduced consumption. It is the case of the petitioners that they have also made representation to the aforesaid society. It is the case of the petitioners that in spite of various representations and the personal meetings, no action was taken by respondent No.1 to rectify the mistake in sanctioning a higher size than the one requested for and warranted on the basis of consumption of the unit. The petitioners, thereafter, sent another representation dated 11-2-2004 and by this time, the water consumption had been further reduced and therefore, the requirement was only of 3″ diameter pipeline. It is the case of the petitioners that by letter dated 27-2-2004 the respondents informed the

petitioners that the application of the petitioners for reducing the size of the pipeline could be considered only after the past dues as claimed by the respondents, were paid. It is the case of the petitioners that the past dues referred to by the respondents in the letter dated 27-2-2004 were only in respect of supplementary bill issued by the respondents retrospectively demanding the minimum consumption charges from all the units and which is the subject matter of arbitration before the learned Arbitrator appointed pursuant to the order passed by this court passed in Special Civil Application No.5526 of 2004 and other cognate matters. It is the case of the petitioners that thereafter they personally represented to the respondents to accept the application without insisting for payment of amount demanded under the supplementary bill. Thereafter, by communication dated 3-3-2005, the respondents sent a reply to the petitioners letter dated 11-2-2004 stating that as per the condition of the MOU between the respondents and the society, there is no provision for reduction in the size of the connection and the society forwarded the letter of respondent No.1 together with the draft MOU informing the petitioners that a meeting is scheduled to be held on 27-2-2005 at 4:00 p.m. in the society office. The said draft MOU *inter alia*

provided that minimum charges will be dependent on the size of the pipeline, that the rate was Rs.16/- per 1,000/- kiloliter and that for three years, the petitioners would not be entitled to reduce the existing connection size and would be bound to draw water for three years. It is the case of the petitioners that in the meeting of the society, the representative of the petitioners remained present and represented that they are ready and willing to sign the MOU draft, provided the condition of MOU draft are modified in line of previous representation of the petitioners and it is the case that they were given to understand that the society also communicated the representation of the petitioners to the concerned officers of respondent No.1. It is the case of the petitioners that thereafter, the petitioners made a representation dated 30-7-2005 contending *inter alia* that while the petitioners had no objection and they are ready and willing to sign the agreement as may be directed by the society and finalized by it within the clause that the petitioners would not be entitled to reduce the existing connection size and would be bound to draw water for three years and requested that the existing connection referred to in the private agreement should be considered to be 4″ diameter

pipeline and the actual modification of the pipeline on the basis of the application of the petitioners should also be made forthwith. That instead of considering the request of the petitioners, respondent No.1 again issued a bill dated 10-10-2005 demanding minimum monthly charge of Rs.4,64,000/- and thereafter, respondent No.2 has sent impugned decision dated 15-10-2005 *inter alia* stating that the representation of the petitioners dated 29-8-2005 has been rejected by the respondents and that as per the new policy of the respondents, the formalities should be completed which included payment of deposit of Rs.4,64,000/- for existing connection and that they are required to complete the said formalities within seven days from the date of said decision dated 15-10-2005, failing which the existing connection of the water was threatened to be discontinued. Being aggrieved by the aforesaid communication (Annexure A to the petition) rejecting the application of the petitioners for reducing the size of the pipeline from 6″ diameter to 4″ diameter and to insist for past payment for considering their application for reducing the size of pipeline, the respective petitioners have preferred the present Special Civil Applications under Article 226 of the Constitution of India for the aforesaid reliefs.

6.Shri Mihir Joshi, learned senior advocate appearing on behalf of the respective petitioners has vehemently submitted that the decision of the respondents rejecting the application of the petitioners for reducing the diameter from 6″ to 4″ is absolutely arbitrary, violative of principles of natural justice and violative of fundamental rights of the petitioners guaranteed under Article 14 and 19(1)(G) of the Constitution of India. It is also further submitted that while taking the decision vide communication dated 15-10-2005, the respondents have not appreciated and considered that the requirement of the petitioners for water connection had been reduced to 5 lacs liter per day and that the petitioners required 4″ diameter pipeline instead of 6″ diameter pipeline and the petitioners cannot be saddled with the payment of more amount than their requirement. It is the contention of the petitioners that the respondents cannot compel the petitioners to have existing connection of 6″ diameter pipeline, even though their requirement is for 4″ diameter pipeline. It is also further submitted that insistence on the part of the respondents vide communication dated 27-2-2004 that the case of the petitioners for reduction of size of the pipeline could be considered only after the past dues as claimed by

the respondents, were paid, is absolutely arbitrary and unjust in view of the fact that the said dispute is already pending before the learned Arbitrator pursuant to the order passed by this court in Special Civil Application No.5526 of 2004 and other cognate matters. It is further submitted by Shri Joshi that the respondents cannot fix the minimum charges for water supply on the basis of the size of the connection and imposition of such conditions for execution of MOU for water supply is unjust, arbitrary and unfair. It is further submitted that the respondents continued to levy charges for the water supply on the basis of the size of the connection would imply that the petitioners would have to pay more amount.

7. Shri Joshi has further submitted that the petitioners have no objection in entering into an agreement and signing MOU except the clause which provides that prohibition on the consumer from changing the size of the existing connection for three years from signing of the agreement, as according to him such a clause would be against public policy, arbitrary and unjust. Relying upon the decision of the Hon'ble Supreme Court in the case of **Central Inland Water Transport Corporation Limited and Another V Brojo Nath Ganguly and Another** reported in AIR 1986 SC 1571 and another judgment of

the Hon'ble Supreme Court in the case of **LIC of India and Others V. Consumer Education Research Centre and Others** reported in AIR 1995 SC 1811, Shri Joshi has submitted that the terms in the contract have to be reasonable one and respondent No.1 - Municipal Corporation being the statutory authority cannot impose the terms which is unreasonable and unjust. It is further submitted by him that the action of the respondents is arbitrary. He has further submitted that there cannot be justification for not reducing the diameter of the pipeline and there is no rational behind the same and therefore, it is requested to allow the present Special Civil Applications and grant the reliefs as prayed for.

8. Per Contra, Shri Prashant G Desai, learned advocate appearing on behalf of the respondents while relying upon the affidavit-in-reply filed on behalf of the respondents and while opposing the present Special Civil Applications has submitted that the present Special Civil Applications are required to be dismissed on the ground of delay and laches inasmuch as, the petitioners were given the water supply connection in the year 1999 with 6″ diameter pipeline and the request of the petitioners for reducing the diameter of pipeline to 6″ to 4″ came to be rejected in the year

1999 and the present Special Civil Applications are filed in the year 2006. It is further submitted by him that there are no fundamental rights of the petitioners being violated as there are no fundamental rights in favour of the petitioners to get the water supply connection and/or to get the water for 22 hours in a day. It is submitted that normally a citizen and resident of Surat is getting two hours water supply in a day and that too with minimum size of the pipe line. It is submitted by him that as the petitioners' units as well as other units and members of the society were in need of additional water and they wanted a special treatment, they requested the Corporation to give extra facility and a request was made by the society to provide 24 hours water in a day to the industries situated in GIDC, Pandesara and pursuant to the said request made by the society, there was a meeting between the society and the Corporation and it was agreed by the society that the required information will be given about the quantity of water needed by each of the unit and thereupon the details were submitted by the petitioners and other units and accordingly the Corporation has made availability of huge capacity of providing water for 22 hours in a day in the GIDC Estate. As stated above a citizen of Surat

is getting water supply for human consumption for two hours in a day, while in view of the special request made, the special treatment is given to GIDC, Pandesara for providing water for 22 hours in a day for their industries. It is submitted by him that there was no compulsion on the part of the Corporation to provide water for 22 hours in a day and there was no compulsion on the part of the petitioners at the relevant time to have water for 22 hours in a day on the terms and condition stipulated. While relying upon the affidavit-in-reply, Shri Desai has submitted that in view of the MOU between the society and the Corporation, the request of the petitioners were turned down as there was no provision for reduction in size of water connection, particularly, in view of the fact that the Corporation has made huge expenditure towards establishing the comprehensive water supply exclusively for the GIDC, Pandesara in which the petitioners are also the members. It is further submitted that in condition No.20 of the MOU dated 24.03.1998, it was made clear that the member unit of the Society will not use the water through tankers and in spite of that, the petitioners used the water through tanker. It is further submitted that the Corporation has spent more than Rs.18 crores specially for providing facility of

water at GIDC, Pandesara and in the MOU entered into between the society and the Corporation, there was no provision of reduction of water pipeline or reducing the size of the water connection. It is further submitted that the respective petitioners submitted requirement in which they have asked for water of 8 Lacs liter per day. It is further submitted that the society has entered into the negotiation for the fresh MOU from 2005 and it was also decided that each unit will also enter into separate agreement and in the said MOU it is provided that the minimum charges will be dependent on the size of the pipeline and that for three years the petitioners would not be entitled to reduce the existing connection size and would be bound to draw water for 3 years and will not be entitled to reduce the connection size. It is further submitted that the draft MOU has been unanimously accepted by the society and the said policy has been framed on the basis of the existing size of the connection and thereby assuring the future income for next three years and the said condition has also been accepted by the society of which the petitioners are the members. It is also further submitted that out of 120 units, 105 units have already signed the new MOU and that the Corporation is not acting contrary to understanding

between the society and Surat Municipal Corporation and therefore the present Special Civil Applications are not maintainable.

9. It is further submitted that the clause in the agreement/MOU are neither unfair nor unjust as alleged. It is further submitted that the new policy is accepted by the members of the society in consultation with the Corporation and they have agreed that there will be no reduction in existing size for three years and the new bills are issued as per the MOU entered into between the society. It is further submitted that the petitioners have not entered into the agreement for a further period only on the ground that the Corporation is not reducing the size of the pipeline. It is further submitted that when the society has given required details, the petitioners have asked for 8 Lacs liter water per day and for that period, the petitioners are required to pay minimum charges for water as per the MOU, which has been signed by the society and the Corporation in which the petitioners are the members. Accordingly, it is submitted that the insistence on the part of the respondents to pay the part dues is justified.

10. It is further submitted that if the request of the petitioners for reducing the diameter of the pipeline

from 6″ to 4″ is accepted and the pipelines are changed, it is likely to affect civil pending proceedings *qua* other unit holders and there will be a huge loss to the Corporation as after spending approximately more than Rs.20 crores, now, the other members may also request to change the pipeline. It is further submitted that there is no compulsion on the part of the petitioners to have the special treatment of 22 hours water supply and if, they are not agreeable then they may get the water supply which is being given to other residents of Surat i.e. 2 hours per day. However, if the petitioners want special treatment and the additional water then the petitioners are bound to agree with terms and conditions of the MOU. It is further submitted that no fundamental rights of the petitioners are violated and/or infringed and therefore, it is requested to dismiss all the Special Civil Applications.

11.Heard, learned advocate appearing for the parties.

12.At the outset, it is required to be noted and which is not disputed by the learned senior advocate appearing on behalf of the petitioners that respondent-Corporation is supplying the water to the residents of Surat for 2 hours in a day and the need of the petitioners' units as well as the members of the

society was much more i.e. between 22 hours to 24 hours in a day and they wanted special treatment by way of more water supply than the water supply to the ordinary residents of Surat. It appears from the record that a request was made by the society of which the petitioners are also members, to provide 24 hours water to the industry situated at GIDC, Pandesara and that the respondent-Corporation considered the same and it was agreed by the society that the required information will be given about the quantity of water needed by each of the unit and thereupon the details were submitted by the petitioners as well as other units with regard to their need and thereafter considering the need of all units, the Corporation has made available the huge quantity of providing water for 22 hours in a day in the GIDC Estate and the Corporation has spent more than Rs.18 crores specially for providing facility of water at GIDC Pandesara. It appears from the record that there was a MOU between the society and the Corporation. AS stated above, the petitioners are also the members of the aforesaid society. There are certain conditions incorporated in the said MOU and there is no provision for reduction in size of water connection. Considering the fact that the Corporation has made huge expenditure towards

establishing the comprehensive water supply exclusively for GIDC Pandesara in which the petitioners are the members, it appears that the petitioners submitted requirement in which they have asked for water of 8 Lacs liter per day and there is a provision of minimum water charges which is the dispute and the said dispute is pending before the learned arbitrator and the supplementary bill for the past minimum water charges is the subject matter of dispute before the learned arbitrator.

13.It appears that subsequently the society has entered into the negotiation for the fresh MOU from 2005 and it was decided that each unit will also enter into separate agreement. It appears that the said MOU provides that minimum charges will be dependent on the size of the pipeline and that for three years the petitioners would not entitled to reduce the existing connection size and would be bound to draw water for three years and will not be entitled to reduce the connection size. It appears from the record and from the petitions that the respective petitioners have no objection in entering into the fresh MOU but they are aggrieved by the condition of not reducing the existing connection size. It is the case of the petitioners that they want the water supply through 4” diameter pipeline

instead of existing water connection of 6″ diameter. Therefore, the question which is required to be considered, is whether the Corporation is justified in incorporating the condition in the new MOU that the minimum charges will be dependent on the size of the pipeline and that for three years, the petitioners would not be entitled to reduce the existing connection size.

14.At the outset, it is required to be noted that aforesaid MOU is suggested and the conditions are provided after negotiation with the society and the Corporation and in fact, out of 120 units, 105 units have already entered into the fresh agreement and signed the new MOU. As stated above, the petitioners are the members of the aforesaid society and the society has entered into negotiation for and on behalf of their members inclusive of the petitioners. As stated hereinabove, the Corporation has incorporated huge expenses approximately more than Rs.18 crores for providing special facility of water at GIDC, Pandesara and the Corporation has made available huge capacity of providing water for 22 hours in a day in the GIDC Estate against the citizen of Surat getting water for human consumption for two hours in a day. As stated hereinabove, before actually establishing the

comprehensive water supply exclusively for the GIDC, Pandesara on the request made by them, the Corporation called for the required information about the requirement of each unit and their need and only thereafter, the special facility is provided and therefore now, it is not open for the petitioners to change their need and/or requirement, as on the basis of their requirement/need, the Corporation has incurred huge expenditure for providing special facility to supply water to GIDC, Pandesara for 22 hours in a day. Even, otherwise, the Corporation would not have incurred huge expenditure of Rs.20 crores and would not have provided the special facility for supplying the water for 22 hours in a day. Now, considering the aforesaid, if after negotiation with the society of which the petitioners are the members, new MOU is prepared incorporating the aforesaid condition and the society has agreed to incorporate such condition which provides that for three years there will not be change in the existing size of the pipelines, it is not open for the petitioners and/or individual members to challenge the same. As stated hereinabove, out of 120 units, 105 units have already signed new MOU. Under the circumstances, the prayer of the petitioner to direct Surat Municipal Corporation to change the existing

pipeline from 6″ diameter to 4″ diameter for the petitioners' units cannot be accepted. If the petitioners want special treatment and water supply for 22 hours in a day, they are bound to accept the condition incorporated in the MOU. It is required to be noted that there is no compulsion on the part of the petitioners now to have special facility of water supply for 22 years in a day. If, the petitioners do not want special treatment, there is no compulsion and they may get the water supply for two hours in a day which is being supplied to the ordinary citizen of Surat. It appears that on one hand, the petitioners want special treatment for providing water supply for 22 hours in a day against regular supply of water for two hours in a day and at the same time, they do not want to comply with the special requirement and the conditions, which are neither unreasonable nor illegal nor arbitrary. Considering incurring of huge expenditure to the extent of Rs.20 crores and more for providing special facility and water supply to GIDC, Pandesara, the Corporation is justified in insisting for the aforesaid condition that for three years at least, there will not be any change in the size of the pipeline. It is required to be noted that if the prayer of the petitioners to change the size of the pipeline

from “diameter to 4” diameter is even granted, in that case the Corporation is required to incur further expenditure of changing the pipeline *qua* the petitioners only. Under the circumstances, the same cannot be accepted.

15. So far as the judgments cited at the bar on behalf of the petitioners with regard to arbitrary terms and conditions provided in the MOU are concerned, it is required to be noted that it is not a simple contract entered into between the Corporation and the petitioners. In the present case, the Corporation on the basis of the representation made by the society and the petitioners and considering their individual need, has provided special water supply for 22 years in a day and has incurred huge expenditure of more than 20 crores and in that case, when the aforesaid conditions are imposed and/or provided in the MOU, it cannot be said that the same are in any way arbitrary and/or against the public policy and/or illegal. Under the circumstances, the judgments cited at the bar referred to hereinabove are not of any much assistance to the petitioners in the facts and circumstances of the case. At the same time, the insistence on the part of the respondent Corporation to pay the past dues and pay the supplementary bill is also not justified as the said

dispute is pending before the learned Arbitrator. Under the circumstances, if the petitioners are ready and willing to sign the new MOU and enter into fresh agreement as done by other 105 units and the members of the society on the terms and conditions mentioned in said MOU with existing pipeline and with a condition not to go for change for three years, the respondent Corporation is directed to enter into the new agreement without insisting for the clearance of the past supplementary bill, which is the subject matter and the dispute pending before the learned Arbitrator and to that extent, the present Special Civil Applications are required to be allowed and are hereby allowed.

16. For the reasons as stated above, the petitions partly succeed to the extent as stated hereinabove only and the rest of the prayers of the petitioners directing the respondent Corporation to change the size of the existing water connection from 6″ diameter to 4″ diameter pipeline is hereby rejected and directing the Corporation to enter into the agreement regarding water supply of the respective petitioners after changing the size of the existing water connection from 6″ diameter to 4″ diameter pipeline also cannot be granted and the said prayer is also rejected and to that extent, the present Special Civil Applications are

dismissed. Rule discharged. Ad-interim relief granted earlier stands vacated forthwith. At this stage, learned senior advocate appearing on behalf of the petitioners requested to continue ad interim relief granted earlier and in the facts and circumstances of the case, ad-interim relief granted earlier is directed to continue till 6th May, 2006 so as to enable the petitioners to obtain appropriate orders from the higher forum.

(M.R.SHAH,J.)

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